



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0173; FRL-9913-71-Region 8]

Approval and Promulgation of Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to North Dakota's State Implementation Plan (SIP). On January 23, 2013, the Governor of North Dakota submitted to EPA revisions to several chapters of the North Dakota SIP. These revisions included the removal of subsections 33-15-03-04.4 and 33-15-05-01.2.a(l) of the North Dakota Administrative Code (NDAC). In this action, EPA is proposing to approve the removal of these subsections from the SIP because such removal is consistent with Clean Air Act (CAA) requirements. The removal will correct certain deficiencies related to the correct treatment of excess emissions from sources. EPA will address the remaining revisions from North Dakota's January 23, 2013 submission in other actions.

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2014-0173, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: clark.adam@epa.gov.

- Fax: (303) 312-6064 (please alert the individual listed in the FOR FURTHER INFORMATION CONTACT if you are faxing comments).

- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

- Hand Delivery: Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2014-0173

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NDAC mean or refer to the North Dakota Administrative Code.
- (iv) The initials SIP mean or refer to state implementation plan.
- (v) The initials SSM mean or refer to startup, shutdown, and malfunction.
- (vi) The words State or North Dakota mean the State of North Dakota, unless the context indicates otherwise.

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);

- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

II. Background

In accordance with the requirements of CAA section 110(a)(2)(A), SIPs must contain enforceable emission limitations and, in accordance with the definition of “emission limitations” in CAA section 302(k), such emission limitations must be continuous. In addition, under CAA section 304(a), any person may bring a civil action against any person alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of an “emission standard or limitation” under the CAA. For the purposes of section 304, “emission standard or limitation” is defined in section 304(f) and includes SIP emission limitations. Thus, SIP emission limitations can be enforced in a section 304 action and so must be capable of enforcement. SIP provisions that create exemptions such that excess emissions during startup, shutdown, malfunctions (SSM) and other conditions are not violations of the applicable emission

limitations are inconsistent with these fundamental requirements of the CAA with respect to emission limitations in SIPs.

NDAC 33-15-03-04.4 created exemptions from a number of cross-referenced opacity limits “where the limits specified in this article cannot be met because of operations and processes such as, but not limited to, oil field service and drilling operations, but only so long as it is not technically feasible to meet said specifications.” NDAC 33-15-05-01.2.a(1) created an implicit exemption from particulate matter emissions limits for “temporary operational breakdowns or cleaning of air pollution equipment” if the source met certain conditions. Because these provisions contemplated outright exemptions from the otherwise applicable SIP emission limits, they were inconsistent with CAA requirements. In addition, NDAC 33-15-03-04.4 had inherent ambiguities that called into question its basic enforceability.

On June 30, 2011, the Sierra Club filed with the EPA Administrator a petition for rulemaking concerning states’ treatment of excess emissions from sources during SSM events (the Petition).¹ In the Petition, the Sierra Club identified existing SIP provisions in 39 states that the Sierra Club considered inconsistent with the CAA, including provisions in the North Dakota SIP. Specifically, the Sierra Club argued that NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(1) were contrary to the CAA because these provisions did not consider each instance of excess emissions a violation of the applicable standard, and because these provisions could be construed to preclude EPA and citizen enforcement.

On February 22, 2013, EPA published a proposed rulemaking in which (among other things) we proposed to grant the Petition as it pertained to NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(1). 78 FR 12460, 12531-12532. We concurred with Sierra Club’s assertion that both provisions are inconsistent with the requirements of the CAA. In our proposed rulemaking,

¹ The Petition is available in the docket for this action.

we also proposed to find that NDAC 33-15-03-04.3 was inconsistent with the requirements of the CAA. We proposed to find that all three of these provisions (NDAC 33-15-03-04.3, NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(l)) are substantially inadequate to meet CAA requirements, and concurrently proposed to issue a SIP call for all three provisions.

On January 23, 2013, the Governor of North Dakota submitted to EPA SIP revisions that included the removal of both NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(l), as well as additional revisions to the North Dakota SIP. We will act on the remaining revisions from the January 23, 2013 submittal (aside from NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(l)) in separate rulemakings. The January 23, 2013 submittal did not revise NDAC 33-15-03-04.3.

III. North Dakota Revisions and EPA Analysis

Under CAA section 107, states have the primary authority and responsibility to develop and implement SIPs that provide for attainment, maintenance, and enforcement of the National Ambient Air Quality Standards and meet other CAA requirements. Under CAA section 110(k), EPA has the authority and responsibility to review state SIP submissions to assure that they meet all applicable requirements. CAA section 110(l) prohibits EPA from approving a SIP revision that (among other things) would interfere with any applicable requirement of the CAA.

In this instance, the State has elected to revise its existing SIP by removing two previously approved provisions that created exemptions from otherwise applicable emission limits in the SIP. As noted, the State removed both NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(l) from the North Dakota SIP in its January 23, 2013 submission.

We consider the removal of these provisions sufficient to correct the inadequacies contained within them and to be consistent with the requirements of the CAA.² As a result of

² For a more in-depth discussion on the inadequacies of NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(l), see our proposed SIP call at 78 FR 12531-12532, February 22, 2013.

their removal from the SIP, the improper exemptions from emissions limits contained within these provisions will no longer be available to sources. EPA's proposed approval of these two revisions is also consistent with CAA section 110(l) because approval will not interfere with any applicable requirement of the CAA. Specifically, removal of the exemptions will not relax the existing emission limitations in the SIP and will in fact be more protective. Furthermore, these revisions will render the revised emission limitations consistent with the requirements of the CAA for SIP provisions by making them continuously applicable and more enforceable. Therefore, we are proposing to approve the removal of these provisions from the SIP.³

IV. EPA's Proposed Action

We are proposing to approve the removal of NDAC 33-15-03-04.4 and NDAC 33-15-05-01.2.a(l) from the North Dakota SIP, as reflected in the January 23, 2013 SIP submission.

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);

³ We note that if we finalize our proposed approval of the removal of these provisions from the SIP, it will have the effect of mooted our proposed SIP call regarding these provisions.

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 24, 2014.

Shaun L. McGrath,
Regional Administrator.

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